REMARKS

This Amendment is filed in response to the Office Action mailed on August 24, 2005. All objections and rejections are respectfully traversed.

Claims 1-34 are in the case.

Claims 12, 13, 17, 22, 27, and 28 were amended to better claim the invention.

Claims 29-34 were added to better claim the invention.

At Paragraph 3 of the Office Action claims 27-28 were rejected under 35 U.S.C. 101 because: "Claim 27 – a computer readable media is not defined (i.e. floppy disk, CD-ROM, etc.) in specification or in the claim";

"Claim 28 – electromagnetic signals carrying instructions for execution."

Applicant respectfully urges that the definition of a "computer readable media" is well within the ordinary knowledge of a person skilled in the art of the invention, that is in the design and operation of computer networks. As knowledge of the term is well known to those skilled in the art of the invention, a person of ordinary skill in the art of the invention is capable of practicing the claimed invention without undue experimenta-

tion. Therefore, use of the term without further definition is consistent with 35 U.S.C. 101, and therefore Claim 27 meets all of the requirements of 35 U.S.C. 101.

Claim 28. states:

28. Electromagnetic signals propagating on a computer network, comprising:
said electromagnetic signals carrying instructions for execution on a processor for the practice of the method having,
setting a status at for at least one port of a plurality of ports, said status being set to either a status of capable of transmitting to other switches lower in a spanning tree protocol (spanning tree protocol is hereinafter STP), OR being set to a status of NOT being able to transmit to other switches lower in the STP (hereinafter referred to as uplinkguard enabled status, or UG status);
setting said at least one port to UG status;
running the spanning tree protocol (STP) in said network switch, said STP capable of selecting said at least one port as either a designated port or as a root port;
running an uplinkguard enabled process, and said uplinkguard enabled process determining whether or not a port set to UG status has been selected by STP as a designated port; and,
setting said at least one port into blocked state in response to said at least one port being both in UG status and selected by STP as a designated port.

Applicant respectfully urges that the novel method steps are embodied in the electromagnetic signals propagating on the computer network. Further, Applicant respectfully urges that the embodiment of electromagnetic signals for transfer of ***instructions for execution on a processor for the practice of the method of*** between computers fully satisfies all requirements of 35 U.S.C. § 101, and all requirements set out in the MPEP.

That is, Applicant respectfully urges that embodiment of the instructions in electromagnetic signals meets all of the requirements of 35 U.S.C. § 101, especially as clarified by MPEP 2106 IV, B, 1(c) at page 2106 of MPEP 8th Edition Incorporating Revision No. 2. (hereinafter MPEP 2106 IV, B, 1(c)). Further, MPEP 2106 IV, B, 1(c) states, at page 2106:

"However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature, see *O'Reilly* 56 U.S. at 114-19; *In re Breslow*, 616 F. 2d 516, 519-21, 205 USPQ 221, 225-26 (CCPA 1980)."

In the case *In re Breslow* claims were permitted by the Court (CCPA) to chemical species which are transient in nature, and cannot be separated out of the mixture in which they are created. The MPEP cites this patentability of transitory phenomena in chemical reactions in support of the statement by the MPEP, "However, a signal claim directed to a practical application of electromagnetic energy is statutory regardless of its transitory nature".

The important point for patentability is the practical application of electromagnetic energy. And a practical application of electromagnetic energy is transmission of a computer program over a computer network, where the computer program is for the practice of a novel method. This practical application of electromagnetic energy is patentable subject matter, as explained by MPEP 2106 IV, B, 1(c).

A copy of *In re Breslow* from 205 USPQ 221 is attached to this Amendment, for the convenience of the Examiner.

Applicant respectfully urges that imbedding instructions for execution on a processor in an electromagnetic signal propagating on a computer network meets the practical application requirements of 35 U.S.C. § 101 and of MPEP 2106 IV, B, 1(c), and that claim 34 therefore claims statutory subject matter. Also, Applicant respectfully urges

that claims 51 and 53 claim statutory subject matter under 35 U.S.C. § 101 and MPEP 2106 IV, B, 1(c).

At Paragraph 4 of the Office Action, Claims 1-26 were allowed.

All independent claims are believed to be in condition for allowance.

All dependent claims are dependent from independent claims which are believed to be in condition for allowance. Accordingly, all dependent claims are believed to be in condition for allowance.

Favorable action is respectfully solicited.

Please charge any additional fee occasioned by this paper to our Deposit Account No. 03-1237.

Respectfully submitted,

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